

REMARKS

In the Office Action, the Examiner rejected claims 1-53 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, the Examiner asserts that the estimating of purchases limitation in the claims is an abstract manipulation of data that produces no physical transformation.

However, the claims are directed to the transformation of certain input data into a new and useful output. Taking claim 1 as an example, panelist data and customer data are received as inputs to the claimed method, the claimed method manipulates the input panelist data to form a relationship based on the panelist data, and the claimed method uses the relationship to transform the customer data into a highly useful and practical output.

Accordingly, applicants are not attempting to patent the manipulation of an abstract idea as asserted by the Examiner. Therefore, the claimed invention is directed to statutory subject matter.

Section 2106 of the MPEP sets out the obligations of the Examiner in examining a software related invention. One obligation of the Examiner is to identify and understand the practical application of the invention, i.e., a "useful, concrete and tangible result" of the invention.

This practical application for the claimed invention should preferably, although not necessarily, be disclosed in the application itself. In the present application, the disclosure of the present application in fact contains an indication of the practical application for the claimed invention. Specifically, the present application discloses a very practical application for the claimed invention. A retailer might know what products it sells to its customers. This same retailer might also know, from market share data, what customers in general purchase from retailers in general. However, without the benefit of the present invention, the retailer cannot know from its own sales and from market share information the purchases that its customers make from competitive retailers. Therefore, the claimed invention of the present application makes up for this deficiency by providing an output in the form of an estimate that gives the retailer this knowledge.

It cannot be doubted that this output is highly valuable to the retailer. Because of this output, the retailer can, for example, benchmark the effectiveness of its marketing strategies against those of its competitors.

Accordingly, because the present invention is highly practical, it produces a "useful, concrete and

tangible result." Therefore, the claimed invention is directed to statutory subject matter.

Furthermore, the claimed invention is significantly functional. It reads in data, manipulates that data, and, as a result of the data manipulation, produces an output (i.e., an estimation) that did not exist in the input data. Accordingly, the input data is transformed into a new, non-obvious, and very useful output (i.e., an estimation of the purchases made by the customers of one supplier from other suppliers).

Section 2106 of the MPEP gives several examples illustrating claimed inventions that have a practical application because they produce useful, concrete, and tangible results. One example involves transforming input data representing discrete dollar amounts into an output representing a final share price. This data transformation was found to constitute a practical application producing a useful, concrete and tangible result. Similarly, the present claims involve transforming input data representing purchases made by certain purchasers into an output representing other purchases.

Therefore, according to this example, the claimed invention is directed to statutory subject matter.

Another obligation imposed on the Examiner by section 2106 of the MPEP is to establish a prima facie case that the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result. According to section 2106 of the MPEP, the Examiner must expressly state how the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result.

The Examiner has not met this burden since the Examiner states only conclusions and does not expressly state how the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result. For example, the Example asserts that the estimating limitations of the claims are simply an abstract manipulation of data because such estimating limitations produce neither physical transformation nor tangible result. However, this assertion is merely two conclusions where one conclusion (that no physical transformation and tangible result are produced) is used to support the other conclusion (estimating purchases is merely an abstract manipulation of data). The Examiner supports neither conclusion with logical reasoning or evidence.

For example, the Examiner does not show that the transformation of the input panelist and customer

data, which do not represent the purchases made by the customers of the supplier of interest from other suppliers, to an output, which does not represent the purchases made by the customers of the supplier of interest from other suppliers, is not a physical transformation or a tangible result. The Examiner also does not show that estimating purchases is an abstract manipulation of data.

Therefore, the Examiner has not met the Examiner's burden to establish a prima facie case that the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result. Indeed, the Examiner cannot meet this burden. The input data is not abstract, the reading of the input data is not abstract, the manipulation of the input data is not abstract, and the estimating of purchases is not abstract.

Accordingly, for this reason also, the claimed invention is directed to statutory subject matter.

A further obligation of the Examiner in examining a software related invention is to review the claims in order to identify the protection sought by the applicant, to understand how the claims relate to and define the invention, and to search the prior art. With respect to this obligation, it is noted that the present application has had extensive prior art examination and

that the Examiner has found the claims to be patentable over the prior art.

Section 2106 of the MPEP goes on to state that the plain and unambiguous meaning of section 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability, and to further state that the subject matter that courts have found to be outside the statutory categories of invention is limited to abstract ideas, laws of nature, and natural phenomena.

The Examiner does not assert that the claimed invention is a law of nature or a natural phenomena. However, the Examiner does assert that the claimed invention is directed to an abstract manipulation of data. But, as indicated above, the input data to the claimed method is manipulated in a very concrete way to produce a very tangible result. In claim 1, for example, panelist data regarding both purchases made by panelists from the supplier of interest and purchases made by the panelists from the other suppliers is read, a relationship between the purchases made by the panelists from the supplier of interest and the purchases made by the panelists from the other suppliers is determined, customer data regarding purchases made by the customers from the supplier of interest is read, and based upon

this customer data and the relationship, purchases made by the customers from the other suppliers are estimated. All data manipulations are concrete, and the result is a concrete output that is very useful to the supplier of interest.

Finally, the Examiner's attention is directed to Ex Parte Donner, 53 USPQ2d 1699, (Bd Pat App & Inter, 1999), in which the Board considered a claim to a computer implemented method of storing and analyzing input data so as to produce an estimated value as an output. The Board held that the step of determining the estimated value is a useful, concrete and tangible result.

Similarly, estimating purchases, as recited in the claims of the present application, is a useful, concrete and tangible result.

For all of the reasons given above, the claimed invention is directed to statutory subject matter.



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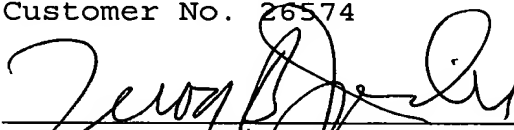
CONCLUSION

In view of the above, the claims of the present application are directed to statutory subject matter. Accordingly, allowance of these claims and issuance of the present application are respectfully requested.

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